

Case No. 05-4433

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

**YASSER EBRAHIM
PETITIONER**

v.

**ALBERTO GONZALES
RESPONDENT**

**OPENING BRIEF AND ADDENDUM
OF PETITIONER**

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SUMMARY OF THE CASE

This is an immigration case involving an Egyptian citizen, Yasser Ebrahim (Mr. Ebrahim), who lawfully entered the United States in August 1993 on a B-2 visa. He subsequently fell in love with, and married a U.S. citizen, Tameka Knazze (Ms. Knazze). After interviewing the couple and finding that they shared a bona fide marriage, Citizenship and Immigration Services (CIS) approved Ms. Knazze's I-130 petition and granted Mr. Ebrahim conditional lawful permanent resident status on September 20, 1995. The couple separated a few months after they married, but did not divorce until five years later, on April 11, 2000.

Mr. Ebrahim and his spouse were required to file a Form I-751, joint Petition to Remove the Conditions on Residence, within the 90-day period prior to the expiration of Mr. Ebrahim's two-year conditional lawful permanent resident status, or to obtain a waiver of the joint filing requirement. Mr. Ebrahim filed a Form I-751 petition with CIS in August 1997. Although this petition was withdrawn, the CIS issued an adverse

decision on May 24, 2000, after Mr. Ebrahim admitted to foolishly signing Ms. Knazze's signature on the petition.

On May 8, 2000, Mr. Ebrahim filed a second Form I-751 and requested a waiver of the joint filing requirement under 8 U.S.C. 1186a (c)(4)(A) and (B). The CIS denied this petition, despite affidavits and other evidence demonstrating Mr. Ebrahim and Ms. Knazze entered a good faith marriage and intended to establish a life together when they married.

Subsequently, Mr. Ebrahim and Ms. Knazze testified before the Immigration Court that they entered their marriage in good faith, but they divorced after struggling with religious and cultural differences, communication issues, and financial stress. Despite their detailed, in-person testimony and documentation establishing the bona fides of the marriage, the Immigration Judge (IJ) affirmed the CIS's denial of the I-751 petition. The Board of Immigration Appeals (Board or BIA) compounded the IJ's error by upholding his decision without responsible analysis.

Mr. Ebrahim requests twenty minutes of oral argument to elucidate the issues raised in this petition for review.

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT	1
STATEMENT OF ISSUES	2
STATEMENT OF THE CASE	3
STATEMENT OF THE FACTS.....	4
SUMMARY OF THE ARGUMENT.....	11
ARGUMENT.....	13
STANDARD OF REVIEW	13
I. MR. EBRAHIM SATISFIED THE LEGAL REQUIREMENTS FOR A HARDSHIP WAIVER AND THE STANDARD OF PROOF THAT HE ENTERED A GOOD FAITH MARRIAGE WITH MS. KNAZZE.....	15
II. THE IJ’S ADVERSE CREDIBILITY FINDING DOES NOT PRECLUDE . THIS COURT FROM REVIEWING THE DENIAL OF THE WAIVER.....	33
III. THE COURT MAY REVIEW THE IJ’S IMPERMISSIBLE REASONS FOR QUESTIONING MS. KNAZZE’S CREDIBILITY.....	46
CONCLUSION	51

TABLE OF AUTHORITIES

Federal Cases

Amador-Palomares v. Ashcroft, 382 F.3d 864 (8th Cir. 2004)-----	13, 15
Arellano-Garcia v. Gonzales, 429 F. 3d 1183 (8th Cir. 2005) -----	16
Bark v. INS, 511 F.2d 1200 (9th Cir. 1975) -----	18, 25, 28
Cho v. Gonzales, 404 F. 3d 96 (1st Cir. 2005)-----	2, 13, 27
Cordero-Trejo v. INS, 40 F. 3d 482 (1st Cir. 1994)-----	14
Damon v. Ashcroft, 360 F. 3d 1084 (9th Cir. 2004)-----	passim
Diallo v. INS, 232 F.3d 279 (2d Cir. 2000)-----	15
Gailius v. INS, 147 F.3d 34 (1st Cir. 1998)-----	14
Ignatova v. Gonzales, 430 F. 3d 1209 (8th Cir. 2005)-----	2, 13
Ismail v. Ashcroft, 396 F.3d 970 (8th Cir.2005) -----	13
Michel v. INS, 206 F.3d 253 (2nd Cir. 2000) -----	13
Monter v. Gonzales, 430 F. 3d 546 (2nd Cir. 2005)-----	2, 39
Mukamusoni v. Ashcroft, 390 F.3d 110 (1st Cir. 2004) -----	14, 27
Nakamoto v. Ashcroft, 363 F. 3d 874 (9th Cir. 2004) -----	2, 20, 25
Oropeza-Wong v. Gonzales, 406 F. 3d 1135 (9th Cir. 2004) -----	15
Osuchukwu v. INS, 744 F.2d 1136 (5th Cir. 1984) -----	42
Phinpathya v. I.N.S., 673 F.2d 1013 (9th Cir. 1981)-----	37
Phommasoukha v. Gonzales, 408 F.3d 1011 (8th Cir. 2005)-----	15
Rodriquez v. INS, 204 F.3d 25 (1st Cir. 2000) -----	25
Sukorov v. Gonzales, --- F. 3d ---, 2006 WL 770462 (8th Cir. 2005) -----	2, 35
United States v. Orellana-Blanco, 294 F. 3d 1143 (9th Cir. 2002)-----	2, 49
United States v. Tagalicud, 84 F.3d 1180, 1185 (9th Cir.1996)-----	25
Zheng v. Gonzales, 415 F.3d 955 (8th Cir. 2005) -----	14

Federal Statutes

8 U.S.C. § 1186a(c)(1) -----	17
8 U.S.C. § 1186a(c)(4)(A) -----	34
8 U.S.C. § 1252-----	16
8 U.S.C. §1186(c) -----	11

8 U.S.C. §1186a-----	11
8 U.S.C. 1186a -----	4, 3, 35
8 U.S.C.A. § 1186a(c)(4) -----	17, 33
8 U.S.C. §§1229a(c)(3)(A) -----	25

Federal Regulations

8 C.F.R. § 1003.1(b) -----	1
8 C.F.R. § 216(e)(2)(i)-----	26

JURISDICTIONAL STATEMENT

This is an immigration case in which Yasser Ebrahim seeks review of the decision of the Board of Immigration Appeals and a final order of an Immigration Judge. The Board's jurisdiction arose under 8 C.F.R. § 1003.1(b). The Board issued its decision on December 12, 2005.

The Immigration and Nationality Act § 242 provides for the judicial review of removal orders. Pursuant to § 242(b)(1) of the Immigration and Nationality Act, a petition for review must be filed not later than 30 days after the date of the final order of removal. Hassan timely filed his petition for review of the Board's decision with this Court on December 22, 2005, pursuant to § 242 (b)(1) of the Act.¹

The petition for review shall be filed with the court of appeals for the judicial circuit in which the Immigration Judge completed the proceedings.² The IJ completed the proceedings in Bloomington, Minnesota. This appeal is from a final order of the Immigration Judge and the Board.

¹ See 8 U.S.C. § 1252 (b)(1) (2004).

² See INA § 242 (b)(2) (2004).

STATEMENT OF ISSUES

1. Did the Immigration Judge err in finding that Mr. Ebrahim and Ms. Knazee did not share a good faith marriage, despite the fact that he met the legal requirements for a waiver and the legal standard of proof of their intent to establish a life together at the inception of their marriage?

◆ *Damon v. Ashcroft*, 360 F. 3d 1084 (9th Cir. 2004).

◆ *Nakamoto v. Ashcroft*, 363 F. 3d 874 (9th Cir. 2004).

◆ *Cho v. Gonzales*, 404 F. 3d 96 (1st Cir. 2005).

2. Did the Immigration Judge misinterpret the law when she determined that Mr. Ebrahim was not credible and disregarded his testimony, especially when he was up-front and honest about his misrepresentation on the first Form I-751, and he rebutted the presumption of fraud or willful misrepresentation?

◆ *Ignatova v. Gonzales*, 430 F. 3d 1209 (8th Cir. 2005).

◆ *Sukorov v. Gonzales*, --- F. 3d ----, 2006 WL 770462 (8th Cir. 2005).

◆ *Monter v. Gonzales*, 430 F. 3d 546 (2nd Cir. 2005).

3. Did the Immigration Judge unlawfully question Ms. Knazee's credibility and the bona fide nature of the marriage simply because she was intrigued by the fact that her husband was from another country?

◆ *Damon v. Ashcroft*, 360 F. 3d 1084 (9th Cir. 2004).

◆ *United States v. Orellana-Blanco*, 294 F. 3d 1143 (9th Cir. 2002).

STATEMENT OF THE CASE

On September 20, 1995, the CIS granted Mr. Ebrahim conditional lawful permanent resident status upon determining that he and his U.S. citizen spouse, Ms. Knazze, shared a good faith marriage.

Mr. Ebrahim filed his first Form I-751, Petition to Remove the Conditions on Residence, on August 18, 1997. CIS denied this joint petition on May 24, 2000, after Mr. Ebrahim admitted he foolishly signed Ms. Knazze's signature on the petition. On May 8, 2000, Mr. Ebrahim filed a second Form I-751 petition and requested a waiver of the joint filing requirement under 8 U.S.C. 1186a (c)(4)(A) and (B).³ On November 1, 2001, the CIS denied the second I-751 petition and the waiver request, and terminated Mr. Ebrahim's conditional resident status.⁴

On July 28, 2004, the IJ affirmed the CIS's decisions denying the first and second I-751 petitions. Mr. Ebrahim timely appealed to the Board, which affirmed the IJ's decision on December 12, 2005. Those decisions compel this Petition for Review.

³ Certified Record (hereinafter referred to as "CR") at 000475-000476.

⁴ CR at 000461.

STATEMENT OF THE FACTS

Mr. Ebrahim is a native and citizen of Egypt. He has one U.S. citizen son, Raamie Yasser Ivan Ebrahim,⁵ who was born on May 13, 1997, to him and Tiziana Albanesi, after he and his U.S. citizen spouse, Ms. Knazze, separated. He was admitted to the United States in New York City, New York on August 20, 1993 as a non-immigrant visitor for pleasure. He moved to Minnesota at the end of 1994 and began attending college and working at Manhattan Pizza in downtown Minneapolis.

Mr. Ebrahim met Tameka Knazze (Ms. Knazze), a United States citizen, at the end of 1994. After dating for several months, Mr. Ebrahim and Ms. Knazze became engaged. They married on April 11, 1995 in Minneapolis, Minnesota. After they married, they moved in together to begin their shared life.

On June 27, 1995, Ms. Knazze filed a Form I-130, Petition for Alien Relative, on Mr. Ebrahim's behalf, and Mr. Ebrahim filed a Form I-485 application to adjust to lawful permanent resident status. On September 20,

⁵ See CR at 000363-000444.

1995, following an interview of the parties about the bona fides of their marriage, the CIS approved the petition and adjusted Mr. Ebrahim's status to that of a conditional permanent resident.

On August 18, 1997, Mr. Ebrahim filed a joint Form I-751, Petition to Remove the Conditions on Residence, which contained, on the bad advice of so-called friends, the forged signature of Ms. Knazze. He also filed a lease dated August 1, 1995 bearing the forged signature of Ms. Knazze in support of the joint petition.

On April 11, 2000, Mr. Ebrahim and Ms. Knazze divorced. On May 8, 2000, Mr. Ebrahim filed a second Form I-751 petition and requested a waiver of the joint filing requirement.⁶ He based his waiver request on the fact that he entered the marriage in good faith, but the marriage was terminated through divorce, and that he would suffer extreme hardship if he were removed from the United States.

⁶ CR at 000475-000476.

On May 5, 2000, before filing the second Form I-751 petition, Mr. Ebrahim withdrew the first petition.⁷ Mr. Ebrahim stated that he did not understand immigration laws in the United States and he followed what he now realizes was bad advice from his friends when he filed the original joint petition. He stated that “the length of cohabitation that he claimed and execution of the Form I-751 was not accurate and he regrets that he was not entirely truthful in that regard.”⁸

Despite Mr. Ebrahim’s withdrawal of the joint petition, CIS still considered it and issued an adverse decision on May 24, 2000.⁹ The CIS focused on the fact that Ms. Knazze’s signatures on the joint petition and the lease were forged. The CIS disregarded Ms. Knazze’s statement that she lived with Mr. Ebrahim for three months after their marriage, and Mr. Ebrahim’s remorse for following bad advice and forging Ms. Knazze’s signature.

⁷ See CR at 000499-000500, App. at 1-2; CR at 000496.

⁸ CR at 00499; App. at 1.

⁹ CR at 000496-000498.

On April 12, 2001, the CIS issued a notice of intent to deny the second Form I-751 petition.¹⁰ On June 18, 2001, Mr. Ebrahim responded with an explanation of the alleged inconsistencies underlying the CIS's notice of intent to deny the second petition.¹¹ In addition, he explained that he could not provide additional documentation of their shared life, including joint bank account statements or other evidence of commingling of assets and liabilities, because he and Ms. Knazze were not gainfully employed during their time together.¹²

In that response, Mr. Ebrahim included an affidavit from himself¹³ and an affidavit from Ms. Knazze, in which she confirmed that she and Mr. Ebrahim married out of love and respect for each other.¹⁴ She also stated that she was angry and frustrated with her husband when she wrote a damaging letter about him and their marriage to the CIS in May 1996.

Further, Ms. Knazze noted that financial difficulties forced her and

¹⁰ CR at 000461.

¹¹ CR at 000463-000469, App. at 3-9.

¹² CR at 000464, App. at 4.

¹³ CR at 000470-000472, App. at 10-12.

¹⁴ CR at 000463-000469; CR at 000473-000474, App. at 13-14.

Mr. Ebrahim to move to separate residences shortly after their marriage. Her affidavit helped to explain her earlier statement to a CIS officer that she and Mr. Ebrahim lived together for approximately two weeks before they moved into separate residences after their lease expired. In both her affidavit and testimony before the CIS officer, she confirmed that Mr. Ebrahim visited her periodically and assured her he would move in with her after he took care of his personal affairs.

In a decision dated November 1, 2001, the District Director denied Mr. Ebrahim's request for a waiver and terminated his conditional resident status.¹⁵ The CIS questioned Ms. Knazze's credibility because it deemed immaterial discrepancies between her affidavit and testimony to a CIS officer as "gross inconsistencies." The CIS disregarded Ms. Knazze's affidavit, noting that "affidavits are self-serving and therefore of little evidentiary value."¹⁶

The CIS also stated that Mr. Ebrahim's credibility was compromised because he filed a joint petition and lease with Ms. Knazze's forged

¹⁵ CR at 000461-000462.

¹⁶ CR at 000461.

signature. The CIS ignored Mr. Ebrahim's explanations for his actions and the fact that he withdrew the joint petition before it issued a decision.

The CIS found that the marriage was not entered into in good faith, and that Mr. Ebrahim failed to show extreme hardship. The CIS's finding that Mr. Ebrahim did not enter a bona fide marriage with Ms. Knazze was contrary to its first determination when it conferred conditional permanent resident status to him.

Subsequently, on April 29, 2002, Immigration and Customs Enforcement (ICE) placed Mr. Ebrahim in removal proceedings by issuing a Notice to Appear. At the hearing, Mr. Ebrahim and Ms. Knazze both testified that they entered into their marriage in good faith. Mr. Ebrahim also admitted that he filed the joint petition bearing the forged signature of Ms. Knazze. He stated that he filed a lease dated August 1, 1995, bearing the forged signature of Ms. Knazze in support of the joint petition. He admitted that it was a horrible mistake and something that was out of character for him to do.

On July 28, 2004, despite Mr. Ebrahim and Ms. Knazze's detailed testimony and the objective documentation of the bona fides of the marriage, the Immigration Judge denied Mr. Ebrahim's requests for relief from removal, including his first Form-751 petition filed in 1997, his second Form I-751 petition filed in 2000, and his application for cancellation of removal under INA § 240.¹⁷

Even though the first and tainted Form I-751 petition was withdrawn, the IJ reviewed it and found that the District Director properly denied it based on fraud because Mr. Ebrahim had signed Ms. Knazze's signature. The IJ also upheld the District Director's denial of the second I-751 petition, which requested a waiver of the joint filing requirement.

On August 27, 2004, Mr. Ebrahim appealed the IJ's decision to the Board. On December 12, 2005, the Board denied Mr. Ebrahim's appeal, finding that he failed to establish that he entered into his marriage in good faith.¹⁸ The Board's erroneous decision prompted the instant petition.

¹⁷ CR at 00050-00061; Addendum at 1-12.

¹⁸ CR at 000001-000003; Addendum at 13-15.

SUMMARY OF THE ARGUMENT

In order to remove the conditions on permanent resident status, a foreign national must file a Form I-751 with the Citizenship & Immigration Services, pursuant to 8 U.S.C. §1186(c). Within 90 days of the second anniversary of the conditional admission, the couple may file a joint Form I-751 petition to remove the conditions.¹⁹

If the couple is divorced, however, the foreign national may file a Form I-751 petition and request a waiver of the joint filing requirement.²⁰ In May 2000, Mr. Ebrahim filed such a petition to remove the conditions on his existing lawful permanent residency. By affirming the CIS's decision denying Mr. Ebrahim's petition and waiver request, the Immigration Judge committed reversible errors.

First, the IJ did not properly analyze whether Mr. Ebrahim and Ms. Knazze married with an intent to establish a life together. She incorrectly applied the legal requirements for the waiver and the legal standard of proof to establish eligibility for the waiver. She focused excessively on the

¹⁹ See 8 U.S.C. §1186a (c)(1)(A).

²⁰ See 8 U.S.C. §1186a (c)(4).

fact that the couple separated after three months and lacked joint assets. She applied her own personal conjecture concerning their intent to establish a life together at the inception of their marriage.

Second, the manner in which the IJ reached an adverse credibility finding was contrary to law. She focused on Mr. Ebrahim's misrepresentations in the prior joint petition, for which he had expressed remorse. Because he withdrew the first petition, it was not subject to the IJ's review. Moreover, Mr. Ebrahim was up-front and entirely forthcoming about his misrepresentation on the first Form I-751, and convincingly rebutted the presumption of fraud or willful misrepresentation. Significantly, his mistake did not operationally affect the bona fides of their marriage, which was no longer viable at the time of the I-751 filing. Also, Mr. Ebrahim had timely and voluntarily recanted the false statement.

In addition, the IJ inappropriately questioned Ms. Knazze's credibility and intent when she married Mr. Ebrahim, simply because she testified she was intrigued that he was from another country, and because she was previously married to another foreign national.

ARGUMENT

STANDARD OF REVIEW

Because the Board's decision is the final decision of the agency, it is the subject of this Court's review.²¹ To the extent, however, that the Board adopts the findings or the reasoning of the IJ, this Court reviews the IJ's decision as part of the final agency action.²²

This Court reviews the lower courts' factual findings that an applicant failed to establish that he entered a good faith marriage with a U.S. citizen under the substantial evidence standard.²³ Substantial evidence is defined as "more than a mere scintilla and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."²⁴ Under this test, the Court may reverse the Board's decision

²¹ *Ismail v. Ashcroft*, 396 F.3d 970, 974 (8th Cir.2005).

²² *Id.*

²³ *Ignatova v. Gonzales*, 430 F.3d 1209, 1213 (8th Cir. 2005). *See also Amador-Palomares v. Ashcroft*, 382 F.3d 864, 866 (8th Cir. 2004); *Cho v. Gonzales*, 404 F.3d 96, 98 (1st Cir. 2005); *Michel v. INS*, 206 F.3d 253, 262 (2nd Cir. 2000).

²⁴ *Amador-Palomares*, 382 F.3d at 867 (internal quotations and citation omitted).

if, based on the evidence, it determines that no reasonable fact-finder could reach the Board's conclusion.²⁵

The Court should review the entire record, not solely the evidence that supports the Board's conclusion.²⁶ "[D]eference is not due [to the BIA] where findings and conclusions are based on inferences or presumptions that are not reasonably grounded in the record, viewed as a whole, or are merely personal views of the immigration judge."²⁷ The Court should reverse the BIA's decision when it "cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view."²⁸

While the Court conducts a substantial evidence review of the lower courts' factual findings, it applies a de novo review to their legal

²⁵ *Zheng v. Gonzales*, 415 F.3d 955, 957 (8th Cir. 2005).

²⁶ *See Gailius v. INS*, 147 F.3d 34, 44 (1st Cir. 1998).

²⁷ *Cordero-Trejo v. INS*, 40 F. 3d 482, 487 (1st Cir. 1994) (citations omitted).

²⁸ *Mukamusoni v. Ashcroft*, 390 F.3d 110, 119 (1st Cir. 2004) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456 (1951)).

determinations and to questions of law.²⁹ By applying the de novo standard of review, the Court may decide legal questions anew and recognize that Mr. Ebrahim is eligible for a waiver of the joint filing requirement as a matter of law.

I. MR. EBRAHIM SATISFIED THE LEGAL REQUIREMENTS FOR A HARDSHIP WAIVER AND THE STANDARD OF PROOF THAT HE ENTERED A GOOD FAITH MARRIAGE WITH MS. KNAZZE.

After conducting a de novo review of the IJ's application of legal principles to this case, the Court should find that the IJ misinterpreted the legal requirements for a hardship waiver by denying Mr. Ebrahim's second Form I-751 petition. Furthermore, the lower courts' factual finding that Mr. Ebrahim failed to demonstrate he entered a good faith marriage with Ms. Knazze is not supported by substantial evidence. Therefore, the Court should overturn the lower courts' erroneous and brutal decisions.

²⁹ *Amador-Palomares*, 382 F.3d at 866; *Phommasoukha v. Gonzales*, 408 F.3d 1011, 1014 (8th Cir. 2005). *See also Oropeza-Wong v. Gonzales*, 406 F. 3d 1135, 1141 (9th Cir. 2004) (stating that "[w]e review the BIA's legal conclusions de novo and its factual determinations for substantial evidence); *Diallo v. INS*, 232 F.3d 279, 287 (2d Cir. 2000) (stating that a review of the Board's findings regarding mixed questions of law and fact is far less deferential than review of factual determinations).

A. The Lower Courts Misapplied the Legal Requirements for a Waiver of the Joint Filing Requirement.

This Court has jurisdiction to consider whether the lower courts properly applied the legal requirements for a waiver of the joint filing requirements. 8 U.S.C. § 1252 (a)(2)(D), a provision added by the REAL ID Act, states as follows:

(D) Judicial review of certain legal claims
Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

Based on the statute itself, the Court may consider constitutional claims or questions of law.³⁰ The IJ and BIA's application of the legal standards for a waiver of the joint filing requirement is a question of law for this Court to consider.³¹

³⁰ See *Arellano-Garcia v. Gonzales*, 429 F. 3d 1183, 1185 (8th Cir. 2005) (stating that circuit courts have jurisdiction to review questions of law and constitutional claims in a petition for review challenging a removal order.)

³¹ 8 U.S.C. § 1252 (a)(2)(D).[Ⓢ]

Under 8 U.S.C.A. § 1186a(c)(4), an applicant qualifies for a waiver of the joint filing requirement on three separate grounds:

- (A) extreme hardship would result if such alien is removed,
- (B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of [8 U.S.C. § 1186a(c)(1)], or
- (C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of [8 U.S.C. § 1186a(c)(1)].

Mr. Ebrahim applied for a waiver of joint filing under 1186a(c)(4)(B), INA §216(c)(4)(B), because he entered the qualifying marriage in good faith, but the marriage was terminated. Because the statute itself refers to the intent of the “alien spouse”, the beneficiary’s intent – more so than the petitioner’s intent – at the time of marriage is critical. In determining whether a marriage is bona fide, reviewing courts consider whether the

spouses intended to establish a life together at the time they were married.³²

However, “the concept of establishing a life as marital partners contains no federal dictate about the kind of life that the partners may choose to lead, and aliens cannot be required to have more conventional or more successful marriages than citizens.”³³ There is no set formula to apply when determining whether a marriage was entered into in good faith.³⁴ The inquiry must be confined to evidence that is relevant to the parties’ intent at the time of marriage, and the immigration judge must refrain from imposing his or her own opinions about what a “real” marriage is or should be or how parties in such a marriage should behave.³⁵

The lower courts’ legal interpretation of what constitutes a real marriage is a question of law before this court. Here, the IJ and BIA disregarded Mr. Ebrahim and Ms. Knazze’s testimony and objective documentation concerning their intent when they married. Instead of

³² See *Bark v. INS*, 511 F.2d 1200, 1201 (9th Cir. 1975).

³³ *Id.* at 1201 – 1202.

³⁴ See *Damon v. Ashcroft*, 360 F.3d 1084, 1088 (9th Cir. 2004).

³⁵ *Id.*

properly considering their true intent at the time of their marriage, the IJ and BIA focused excessively on their conduct after the marriage. Thus, their legal definition of a good faith marriage constituted a higher standard of proof.

Although Mr. Ebrahim and Ms. Knazze experienced marital difficulties because of cultural and financial reasons, and separated after three months, their conduct did not negate their original and continuing intent to establish a life together when they married. The I-130 petition and Mr. Ebrahim's adjustment of status application were approved because the couple established they married in good faith.

The waiver of the joint filing requirement exists because individuals who fall in love and marry in good faith can experience marital problems that result in separation and divorce. By requiring a longer period of cohabitation and evidence of joint assets, the IJ and BIA misapplied the legal requirements for a waiver. The Court should conduct a de novo review of this legal issue and reverse the lower courts' determination. At a minimum, the Court should find that the IJ and BIA's finding that Mr.

Ebrahim committed marriage fraud is not supported by substantial evidence.

B. The Lower Courts' Factual Finding That Mr. Ebrahim and Ms. Knazee Did Not Enter a Good Faith Marriage is Not Supported by Substantial Evidence.

Petitions for statutory waivers under § 1186a(c)(4)(B) on the basis of a good faith marriage involve legal and factual questions that are not subject to the pure discretion of the IJ or BIA.³⁶ "[T]he Attorney General cannot legally make a judgment [about whether a petitioner's marriage was in good faith] solely according to the dictates of his or her conscience."³⁷ Thus, the Court may review the IJ and BIA's decision that Mr. Ebrahim and Ms. Knazee did not enter their marriage in good faith, which was the basis of the denial of a statutory waiver under § 1186a(c)(4).

Evidence relevant to a couple's intent at the time of the marriage includes, *but is not limited to*, proof that they were listed together on

³⁶ See *Nakamoto v. Ashcroft*, 363 F.3d 874, 880 (9th Cir. 2004) (holding that marriage fraud involves reviewable legal and factual questions); see also *Damon v. Ashcroft*, 360 F.3d 1084, 1089 (9th Cir. 2004) (describing legal and factual issues involved in good faith marriage determinations).

³⁷ *Nakamoto*, 363 F.3d at 881.

insurance policies, property leases, income tax forms or bank accounts and testimony or other evidence regarding their courtship, wedding ceremony and whether they shared a residence.³⁸ A marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married.

In an analogous case, *Damon v. Ashcroft*, a citizen of Korea who was granted conditional permanent resident status following her marriage to a United States citizen petitioned for a review of an order of the BIA upholding the IJ's decision to deny her I-751 petition.³⁹ The Ninth Circuit Court held that the IJ's finding that the marriage lacked good faith was not supported by substantial evidence, and remanded the case to the BIA.⁴⁰

The Korean citizen, Sung Hee Damon (Sung Hee), married Scott Damon (Scott), a United States citizen, on November 9, 1989 in a civil ceremony in Hawaii. Although Sung Hee knew little English and Scott knew no Korean, the couple used hand signals and the help of relatives to

³⁸ *Damon v. Ashcroft*, 360 F.3d 1084, 1088 (9th Cir. 2004) (emphasis added).

³⁹ *Id.* at 1086.

⁴⁰ *Id.* at 1090.

communicate. After their marriage, they moved into a bedroom in Sung Hee's sister's house. They shared a joint bank account until 1990, and paid the rent and telephone bills to the sister. Sung Hee never paid her sister with checks; instead, she endorsed her payroll check over to her sister to pay the rent. She paid her share of the telephone bill every month by giving her sister cash. Because of their living arrangement, there was no lease in her name and no documentary evidence that she paid rent or bills relating to her residence with her husband. The marriage sadly failed, the couple separated in December 1990, and they were officially divorced in September of 1993.⁴¹

The IJ concluded that the evidence did not support a determination that the marriage had been entered into in good faith.⁴² However, the Ninth Circuit Court disagreed, and found that Sung Hee had in fact presented substantial evidence that compelled a finding that she and Scott intended to establish a life together at the time they were married: they courted several weeks before marrying, they had a wedding ceremony,

⁴¹ *Id.* at 1086.

⁴² *Id.* at 1088.

they shared finances and a joint bank account, and they lived together, sharing a residence and experiences.⁴³

The Ninth Circuit held that the IJ improperly relied on her own inferences and conjectures.⁴⁴ In her order denying Sung Hee's application, the IJ found that "it is implausible that the respondent, a woman with two children, would rush into marriage six days after returning from Korea to the United States with a man she hardly knew, and with whom she did not share a common language or cultural background."⁴⁵ The IJ also found it significant that Sung Hee did not take Scott's last name and that the wedding was a non-religious ceremony.⁴⁶

The Ninth Circuit held that these reasons were insufficient and impermissible bases for the IJ's decision.⁴⁷ Rather than judging the objective evidence of intent, the IJ imposed her own values and

⁴³ *Id.* at 1089.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

suppositions on the interpretation of the facts.⁴⁸ The court emphasized that when determining whether the parties intended to make a life together, judges must look to objective evidence and refrain from imposing their own norms and subjective standards on the determination. The court pointed out that there are many women in today's society who do not take their husband's last name; yet they fully intend to establish a life with their partner. Nor is a religious imprimatur necessary to show that a couple takes their marital vows seriously. Finally, the court rejected the implication that only those who share a common language and background can form an intent to establish a life together. The court correctly observed that much of American culture is itself the product of unions between people of different backgrounds and different ethnicities.⁴⁹

The lower courts' factual determination that Mr. Ebrahim failed to establish he acted in good faith in marrying Ms. Knazze is unsupported by substantial evidence on the record. The relevant legal standard is whether Mr. Ebrahim intended to establish a life with his spouse at the time he

⁴⁸ *Id.*

⁴⁹ *Id.*

married her.⁵⁰ Evidence of post-marriage conduct is relevant only to the issue of whether the parties intended to establish a life together when they married each other.⁵¹ Mr. Ebrahim's marriage is legitimate so long as this standard is met, even if securing an immigration benefit was one of the factors that led him to marry.⁵²

Under the substantial evidence standard, the Court should affirm the IJ's decision unless the evidence is so compelling that no reasonable fact finder could fail to find the facts as Mr. Ebrahim asserted.⁵³ The CIS, however, bears the underlying burden of proof to establish by "clear and convincing evidence" that Mr. Ebrahim's status has changed.⁵⁴ Like the Ninth Circuit Court in *Nakamoto*, this Court should combine the substantial

⁵⁰ See *Rodriquez v. INS*, 204 F.3d 25, 27 (1st Cir. 2000)(citing *Bark v. INS*, 511 F.2d 1200, 1201 (9th Cir.1975)).

⁵¹ *Id.* (citing to Immigration and Nationality Act, § 237(a)(1)(G)(i), 8 U.S.C.A. § 1227(a)(1)(G)(i)); *Bark v. INS*, 511 F.2d 1200, 1202 (9th Cir. 1975).

⁵² See *Matter of Boromand*, 17 I. & N. Dec. 450, 454 (BIA 1980); Sarah Ignatius & Elisabeth S. Stickney, *Immigration Law & the Family*, § 4:21 (2004); cf. *United States v. Tagalicud*, 84 F.3d 1180, 1185 (9th Cir.1996) ("The ulterior motive of financial benefit or immigration benefit does not make the marriage a fraud, though it may be evidence that the marriage is fraudulent.") (interpreting 8 U.S.C. § 1325(b)).

⁵³ See *Nakamoto*, 363 F. 3d at 882.

⁵⁴ See *id.* (citing to INA §240 (c)(3)(A), 8 U.S.C. §§1229a(c)(3)(A)).

evidence test with the CIS's burden of proof to determine whether substantial evidence supports a finding by clear and convincing evidence that Mr. Ebrahim committed marriage fraud.⁵⁵

Mr. Ebrahim met his burden of proof that he married with the requisite intent to establish a life with Ms. Knazze. He introduced uncontradicted evidence - his and her in-person testimony – that they married for love; that after the separation the ex-wife was “upset, confused, hurt;” and that the ex-wife “still wanted to keep in contact with him.”⁵⁶ Furthermore, he provided evidence that, after the marriage, he and Ms. Knazze opened a joint bank account and received bills in both their names.⁵⁷

There was also no dispute that Mr. Ebrahim and Ms. Knazze lived together shortly after their marriage, and that financial reasons led to their initial decision to move into separate, temporary residences with friends.

⁵⁵ *Id.* at 882.

⁵⁶ CR at 000172.

⁵⁷ *See* 8 C.F.R. § 216(e)(2)(i) (noting the potential relevance to the good-faith determination of “[d]ocumentation relating to the degree to which the financial assets and liabilities of the parties were combined”).

Their were no affidavits or objective documentation contradicting the fact that they resided together, albeit briefly, after their marriage. Their post-marriage conduct demonstrates that they entered their marriage in good faith, but it was terminated five years later through divorce.

These facts substantiate the conclusion that Mr. Ebrahim and Ms. Knazze shared a bona fide marriage. Moreover, the timing of the marriage and the separation cannot be taken in isolation. This Court is “not permitted to analyze these findings in isolation; we must evaluate them in context.”⁵⁸ When the facts are analyzed in context “any connotation of fraud raised by the timing of the marriage and the separation largely evaporates.”⁵⁹

Furthermore, the IJ erroneously focused on the couple’s separation in her decision, noting that after they were separated, they had no contact with each other. This reliance on the couple’s separation is also

⁵⁸ See, e.g., *Mukamusoni v. Ashcroft*, 390 F.3d 110, 119 (1st Cir. 2004) (emphasizing that substantial evidence review requires an assessment of the entirety of the administrative record); *Cho v. Gonzales*, 404 F.3d 96 (1st Cir. 2005).

⁵⁹ *Cho v. Gonzales*, 404 F.3d 96, 104 (1st Cir. 2005).

impermissible when determining whether a marriage was bona fide at its inception.

In an analogous case, a foreign national student married a lawful permanent resident who filed an immigrant visa petition on his behalf.⁶⁰ The foreign national and his spouse testified at the hearing on his application that they married for love and they admitted quarreling and separating.⁶¹ The Immigration Judge found that the marriage was a sham, relying primarily on evidence of the couple's separation.⁶² In affirming the Immigration Judge, the BIA said that the foreign national and his wife lived in separate quarters, and though both testified that their marriage was a good one, the testimony as to how much time they actually spent together was conflicting.⁶³

The Fifth Circuit Court of Appeals reversed, holding that it was error to base the determination solely on the fact that the foreign national

⁶⁰ *Bark v. INS*, 511 F. 2d 1200 (5th Cir. 1975).

⁶¹ *Id.* at 1201.

⁶² *Id.*

⁶³ *Id.*

student and his wife had separated.⁶⁴ The BIA's determination was also improperly influenced by the irrelevant fact that the wife could and did leave as she pleased when the couple was together.⁶⁵

The court reasoned that:

the concept of establishing a life as marital partners contains no federal dictate about the kind of life that the partners may choose to lead. Any attempt to regulate their life styles, such as prescribing the amount of time they must spend together or designating the manner in which either partner elects to spend his or her time, in the guise of specifying the requirements of a bona fide marriage would raise **serious constitutional questions**.⁶⁶

The court also recognized the fact that "couples separate, temporarily and permanently, for all kinds of reasons that have nothing to do with any preconceived intent not to share their lives, such as . . . educational needs, employment opportunities, illness, poverty and domestic difficulties."⁶⁷

⁶⁴ *Id.* at 1202.

⁶⁵ *Id.*

⁶⁶ *Id.* at 1201 (emphasis added).

⁶⁷ *Id.* at 1202.

The court found that “evidence of separation, standing alone, cannot support a finding that a marriage was not bona fide when it was entered.”⁶⁸

Similarly, the fact that Mr. Ebrahim and Ms. Knazze separated after three months of marriage should not have been a basis for the IJ’s decision in this case. The fact that they separated is not dispositive of a lack of intent to share their lives together at the time of their marriage.⁶⁹

In this case, the IJ focused on the evidence that Mr. Ebrahim did not possess, and disregarded the evidence that he did provide. The IJ noted that Mr. Ebrahim and Ms. Knazze had no joint assets, owned no property together, and owned no cars together. Thus, the IJ focused on what the parties lacked, instead of what they did possess - a bona fide marriage at the outset preceded by a long romantic friendship in which they spent hundreds of hours together at a Café getting to know each other.⁷⁰

⁶⁸ *Id.*

⁶⁹ *See id.* (stating that “the inference that the parties never intended a bona fide marriage from proof of separation is arbitrary unless we are reasonably assured that it is more probable than not that couples who separate after marriage never intended to live together.”)

⁷⁰ CR at 000056; Addendum at 7.

The IJ also emphasized that Ms. Knazze never put any money into their joint bank account.⁷¹ However, it is important to consider the circumstances surrounding this marriage. Both Mr. Ebrahim and Ms. Knazze were quite young – only 22 and 23 years of age. Mr. Ebrahim was a student, and Ms. Knazze was unemployed for at least part of their marriage. They were, according to Mr. Ebrahim, “very, very poor.” Mr. Ebrahim was also sending a portion of what little money they did have home to Egypt to support his mother and three siblings against Ms. Knazze’s desire, which somewhat explains why she did not put money into their joint account. Simply because a married couple is young and too poor to own a house, a car, or to have other assets together does not mean that their marriage is not as valid as that of a couple with more financial means.

Mr. Ebrahim testified that, to the best of his recollection, Ms. Knazze did not have a job at the time they had the joint account, which further explains why she was not depositing funds into the account.⁷² The judge imposed her own norms and standards on this couple, rather than focusing

⁷¹ CR at 000056, Addendum at 7.

⁷² CR at 000140.

objectively on their intent at the time of the marriage. The record shows that both Mr. Ebrahim and Ms. Knazze stated unequivocally that they loved each other and married each other because of their mutual love and affection and their desire to settle down and start a family.

The IJ failed to impartially judge the parties' evidence of their intent to establish a life together and instead imposed her own values and standards upon their marriage. In her decision, she focused on factors that were irrelevant to their intent when they married, including their lack of joint assets, the fact that Mr. Ebrahim was from another country, and the fact that they met and married within a few months. Because the lower courts' finding that Mr. Ebrahim and Ms. Knazze did not share a bona fide marriage is unsupported by substantial evidence, the Court should reverse this erroneous determination.

II. THE IJ'S ADVERSE CREDIBILITY FINDING DOES NOT PRECLUDE THIS COURT FROM REVIEWING THE DENIAL OF THE WAIVER.

Although the IJ's adverse credibility finding concerning Mr. Ebrahim is not subject to this Court's review,⁷³ the Court may review questions of law concerning *how* the IJ reached its adverse credibility finding. Furthermore, the Court's analysis of whether there is a "good faith" basis for a waiver does not require a reversal of the IJ's credibility finding. The credible, objective documentation and Ms. Knazze's testimony are sufficient to establish they entered their marriage in good faith.

A. The Court Should Review the Manner In Which the IJ Reached an Adverse Credibility Finding.

In *Ignatova v. Gonzales*, the Court held that it lacks jurisdiction to review questions of fact underlying the Attorney General's discretionary denial of a request for a hardship waiver.⁷⁴ The Court stated as follows:

Under 8 U.S.C. § 1186a(c)(4), the Attorney General has discretion to "remove the conditional basis of the permanent resident status for an alien[,]" and to

⁷³ *Ignatova v. Gonzales*, 430 F. 4d 1209 (8th Cir. 2005).

⁷⁴ *Id.* at 1213.

decide “what evidence is credible and the weight to be given to that evidence.” “The determination of what evidence is credible and the weight to be given to that evidence shall be within the sole discretion of the Attorney General.”⁷⁵

In that case, the Court held that it lacks jurisdiction to review the denial of Ignatova’s request for a hardship waiver under 8 U.S.C. § 1186a(c)(4)(A) because of her **lack of credibility**.⁷⁶ The Court found she did not qualify for a waiver “because of her sham marriage, her failure to show extreme hardship, and [her spouse’s] failure to sign the I-130 form.”⁷⁷

The Court recognized that some courts have found jurisdiction to review whether an applicant qualifies for a waiver under 1186a(c)(4)(B), which requires a threshold ruling of whether the marriage was entered into in good faith.⁷⁸ Nevertheless, the Court ultimately ruled that because the focus was on an adverse credibility finding, the denial of the waiver was not subject to judicial review.⁷⁹ Importantly, the Court did not address the

⁷⁵ *Id.*

⁷⁶ *Id.* at 1212.

⁷⁷ *Id.*

⁷⁸ *Id.* at 1213.

⁷⁹ *Id.*

legal standard for determining a good faith marriage, which is the main legal issue in this case.

The Court made a similar ruling in *Suvorov v. Gonzales*,⁸⁰ in which it declined to review the denial of a waiver under 8 U.S.C. 1186a (c)(4)(B) because it required an analysis of the IJ's credibility finding. In that case, the focus was on credibility, and the IJ's weighing of conflicting evidence and other evidence.⁸¹

Here, Mr. Ebrahim is not asking the Court to overturn the IJ's adverse credibility finding, or to review how the IJ weighed the conflicting evidence and other evidence. Instead, he petitions the Court to review the manner in which the IJ determined he was not credible. The Court has jurisdiction to consider the legal issue of whether the IJ deprived Mr. Ebrahim of due process, even if the Court may not reverse the IJ's adverse credibility finding.

In particular, the IJ erred by focusing on the one mistake Mr. Ebrahim made when he signed Ms. Knazze's signature on the initial joint petition,

⁸⁰ 2006 WL 770462, --- F. 3d ---- (8th Cir. 2006).

⁸¹ *Id.* at *4.

giving an inordinate amount of weight to that aspect of the record without balancing all of the favorable evidence concerning Mr. Ebrahim's credibility. Furthermore, the joint petition, which was withdrawn, was not subject to the IJ's review. Based upon his one mistake, the IJ erroneously concluded that his testimony regarding his marriage to Ms. Knazze was not credible and that their entire marriage was not *bona fide*.⁸²

The IJ's isolated, skewed approach in assessing Mr. Ebrahim's credibility is contrary to law. The Court has jurisdiction to address constitutional issues, such as whether the IJ deprived Mr. Ebrahim's due process right to a fair hearing on the merits of his second Form I-751 petition.

⁸² CR at 000059-000060, Addendum at 10-11.

B. The IJ Erred In Sustaining The Denial Of The I-751 Petition Because Mr. Ebrahim Was Up-Front And Remorseful About His Actions, The Transgression Did Not Affect The Bona Fides Of Their Marriage, And It Is Axiomatic That A Timely Recantation Of A False Statement Made Voluntarily Is Effective.

The IJ misapplied the law when she considered Mr. Ebrahim's misrepresentation in his first petition as an important factor in her adverse decision on the second petition. The IJ should have considered the second petition on its own strength and merits.

Circuit Courts have differentiated between statements on applications and oral testimony in court when determining whether the false statement is a "false testimony" within the meaning of INA §101(f)(6).⁸³ The Ninth Circuit has held that a foreign national's false statement on an application did not constitute "false testimony" under the statute because she was not under oath to establish proof of a fact to a court.⁸⁴ Similarly, Mr. Ebrahim's signing of Ms. Knazze's signature on his initial joint Form I-751 petition does not entirely damage his credibility because this did not constitute testimony under oath to the court.

⁸³ *Phinpathya v. I.N.S.*, 673 F.2d 1013, 1018-19 (9th Cir. 1981).

⁸⁴ *Id.* at 1017.

Even where a foreign national in an immigration proceeding testifies falsely under oath as to a material fact, if she or he voluntarily and without prior exposure of the false testimony comes forward and corrects the testimony, she or he has not committed perjury and the charge based thereon is not sustained.⁸⁵

Here, unlike the applicant in *Ignatova*, Mr. Ebrahim was completely forthright and honest to the court in explaining why, because of bad advice from his friends and his lack of knowledge and confusion regarding immigration law procedure, he signed Ms. Knazze's signature on the initial I-751. He admitted that he used extremely poor judgment, apologized profusely for that mistake, expressed sincere remorse, and withdrew the petition. *Most importantly, he disclosed his mistake after he retained counsel, which was very early on in the process and before the government's handwriting expert testified that it was not Ms. Knazze's signature on the document.*

The Second Circuit Court of Appeals recently addressed "materiality" for a material misrepresentation charge in *Monter V.*

⁸⁵ *Matter of M--*, 9 I. & N. Dec. 118, 119 (BIA 1960).

Gonzales,⁸⁶ a case strikingly similar to the one at bar. In *Monter*, the petitioner, a conditional resident, and his U.S.-citizen spouse, jointly and timely filed a petition to remove the conditions on his residence (Form I-751). Petitioner falsely listed the same address for his U.S.-citizen wife and himself on the petition.⁸⁷ In fact, the couple had separated six weeks earlier, but remained in regular contact with hopes of reconciling.⁸⁸ The address listed on the petition was the address of the petitioner's wife where she was living, but not where she was then residing.

Petitioner was subsequently placed in removal proceedings and charged under INA § 237(a)(1)(A) for being inadmissible under INA § 212(a)(6)(C)(i) for having “procured a benefit by fraud or by willfully misrepresenting a material fact”. Petitioner conceded that the misrepresentation was willful. The Immigration Judge sustained the charge following a complicated procedural history in which the IJ denied the petitioner's motions for change of venue and to continue proceedings

⁸⁶ 430 F.3d 546 (2nd. Cir. 2005).

⁸⁷ *Id.* at 557.

⁸⁸ *Id.* at 550.

to permit his wife to testify on his behalf. The BIA affirmed the IJ's decision, agreeing with the IJ that the petitioner's false misrepresentation of his separate residence was a material fact which made him removable, even if the CIS would not have necessarily denied the petition if it had known about the separate residences. Petitioner filed a petition for review of the BIA's decision. The Second Circuit Court held, *inter alia*, that the BIA erred in not affording petitioner the opportunity to rebut the presumption of removability established by the government; and the BIA abused its discretion in affirming IJ's denial of petitioner's venue motion.⁸⁹

The Second Circuit, in reaching its decision, stressed that even though the misrepresentation of residence was material, "*there is only a presumption of removability, one that petitioner may be able to rebut.*"⁹⁰ The Court found that neither the IJ nor the BIA gave the petitioner an opportunity to rebut the presumption by showing that the marriage was bona fide and thus, the I-751 warranted further review.

⁸⁹ *Id.* at 560.

⁹⁰ *Id.* at 558.

In the instant case, the IJ and the BIA denied Mr. Ebrahim the opportunity to meet his burden of proof that the marriage through which he obtained conditional resident status was entered into for reasons of the heart as opposed to circumventing the United States immigration laws. In *Monter*, the IJ denied a change of venue motion, depriving the petitioner an opportunity for his ex-wife to testify in the proceedings.

Here, Mr. Ebrahim's ex-wife did testify credibly, but due to an old shoplifting conviction against her, and the single mistake made by Mr. Ebrahim, the IJ and BIA ignored the positive evidence of bona fides provided, and instead concentrated on Mr. Ebrahim's one-time error in judgment. Instead of considering the testimony and documentation on record, which established the bona fide nature of the marriage, the IJ and BIA focused on what evidence Mr. Ebrahim and his wife could not or did not provide.

In *Osuchukwu v. INS*, the Fifth Circuit Court of Appeals stated that the BIA must "...consider the issues raised, and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard

and thought and not merely reacted.”⁹¹ In this case, the BIA failed to address the issues raised in Mr. Ebrahim’s appeal. The BIA did not address whether the Immigration Judge erred in sustaining the District Director’s denial of the second I-751 petition when the IJ failed to give any weight to the ex-wife’s testimony and the supporting evidence demonstrating their intent to share their lives together at the inception of their marriage. Rather, the BIA reacted to Mr. Ebrahim’s mistake in forging his ex-wife’s signature, giving an inordinate amount of weight to that aspect of the record without balancing all of the favorable evidence concerning the bona fide nature of the marriage.

Based upon his one mistake, the IJ erroneously concluded that Mr. Ebrahim’s testimony regarding his marriage to Ms. Knazze was not credible and that their marriage was not bona fide. The credible evidence submitted by the petitioner in an attempt to rebut the presumption of a fraudulent marriage should not be presumed to be false or contrived, but rather should receive fair and reasonable evaluation. It is impossible for a

⁹¹ *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984).

petitioner to prove that his or her intent was bona fide when the CIS District Director dismisses their affidavit as “self-serving” and refuses to give any weight to the affidavits of his spouse and of people who observed them during their marriage.

The BIA has held that a marriage is bona fide despite contradictory testimony concerning the reasons for the marriage. In *Matter of Boromand*,⁹² the parties were married just two months after they met. The U.S. citizen wife testified that the parties had a good relationship for the first month of their marriage until the foreign national left the state to attend school. It was only after he returned three months later that the parties’ differences surfaced. Subsequent to his return, the parties cohabited for a three-month period.

In a sworn statement, the wife claimed that the foreign national informed her prior to their marriage that his school tuition would be less expensive if he married a United States citizen and became a lawful

⁹² 17 I.&N. Dec. 450, 454 (BIA 1980).

permanent resident. She further claimed that the foreign national offered her a Persian rug if she would marry him.

At the hearing, however, the wife claimed that the foreign national gave her the rug after her marriage and that he did not pay her any money for the marriage. In addition, she maintained that she married the foreign national because she loved him. Although the wife at one time stated that she believed that the foreign national had married her in order to obtain immigration benefits, she later testified that she did not think that his immigration problems were his only reason for marrying her.

The BIA found that the parties entered into a bona fide marriage with the intent of joining together as husband and wife, in spite of the fact that there was contradictory testimony regarding their love for one another and the reasons for their marriage. The BIA should have reached a similar conclusion here, but instead focused on Ms. Knazze's forged signature on the initial joint petition, and the parties' separation.

In assessing Mr. Ebrahim's credibility, the lower courts overlooked evidence of his good moral character. Mr. Ebrahim does not have a pattern

of violating immigration laws; in fact, he has no criminal history and has been successfully employed in the United States for many years. There are several testimonials in the record from friends, co-workers, and former employers attesting to his exemplary character.⁹³ Elena Shea, Account Executive, Project Manager at Procter & Gamble states that Mr. Ebrahim “is a man of strong character who will only add great depth to the ‘melting pot’ of America.”⁹⁴ Lilian Leo, Retirement Counselor, adds, “Besides the hardworking businessman and loyal friend, Yasser’s proudest role in life is being a father to his son...”⁹⁵

Rather than considering the totality of the circumstances surrounding Mr. Ebrahim and his marriage, the IJ focused on his one transgression - a mistake he has freely admitted and deeply regrets. The fact that Mr. Ebrahim made a mistake when filling out his initial I-751 certainly does not mean that the marriage itself was a sham. The IJ failed to give his testimony a fair and reasonable consideration, and she made it impossible

⁹³ See CR at 000445-000455; App. at 15-25.

⁹⁴ CR at 000445; App. at 15.

⁹⁵ CR at 000447; App. at 17.

for him to prove the bona fides of his marriage by refusing to look past this mistake to the mountain of evidence lying behind it.

III. THE COURT MAY REVIEW THE IJ'S IMPERMISSIBLE REASONS FOR QUESTIONING MS. KNAZZE'S CREDIBILITY.

The IJ did not issue a specific adverse credibility finding, but had concerns about Ms. Knazze's credibility because of her eight-year-old conviction for theft at Nordstrom's and the fact that she married and divorced another foreigner, a Muslim man from Jordan.⁹⁶ These facts did not relate to the heart of Ms. Knazze's testimony concerning the marriage. It was racially insensitive, inappropriate and unlawful for the IJ to find that simply because Ms. Knazze was intrigued by the fact that her husband was from another country, the marriage was not bona fide.

A. The IJ's Concern About Ms. Knazze's Credibility Was Based on Irrelevant Factors.

The IJ questioned Ms. Knazze's credibility because of her theft offense at a department store where she was employed many years after she had separated from Mr. Ebrahim. Counsel for Mr. Ebrahim felt the question was irrelevant and objected, but was overruled. After Ms. Knazze

⁹⁶ CR at 000057-000058, Addendum at 8-9.

answered the question truthfully, the IJ held her answer against her and determined that she must be lying about her relationship with her ex-husband because she had misappropriated some money.

After making this flawed supposition, the IJ made an even longer leap and concluded that Ms. Knazze married Mr. Ebrahim, a Middle Eastern man, and divorced him for reasons other than love, simply because she had been previously married to a man from a Middle Eastern country. This conclusion by the Immigration Judge is racially insensitive, irrational and unlawful. Moreover, the conduct of Ms. Knazze occurring after her separation and divorce from the respondent is completely irrelevant to their intent to establish a life together at the time of their marriage.

B. The IJ Disregarded Ms. Knazze's In-Person Testimony, Which Confirmed That She And Mr. Ebrahim Loved Each Other And Intended To Establish A Life Together When They Married.

When asked why she married Mr. Ebrahim, Ms. Knazze responded, "Because I, again, wanted to be settled and I...liked the idea of becoming a wife and having a family and loving and supporting my husband."⁹⁷ When

⁹⁷ CR at 000165, App. at 28.

asked whether she doubted that Mr. Ebrahim loved her at the time of their marriage, Ms. Knazze replied, “There is no doubt, no.”⁹⁸

The IJ emphasized the fact that Ms. Knazze had subsequently married another Muslim man from a different country. Speculating “there is a pattern of [Ms. Knazze] marrying men from another culture and filing papers on their behalf,”⁹⁹ the IJ found that Mr. Ebrahim failed to establish that he entered into marriage in good faith. The IJ imposed her own scandalous suppositions on these facts, none of which are even relevant to the parties’ intent at the time of the marriage. Like the immigration court in *Damon*,¹⁰⁰ the IJ in the present case based her decision on insufficient and impermissible reasons, in violation of his due process and equal protection rights guaranteed by the United States Constitution.

Prejudice in a judicial context regarding the parties’ conduct prevents the impartial decision-making that both the Sixth Amendment and fundamental fairness require. Negative stereotypes may well prevent a

⁹⁸ *Id.*

⁹⁹ CR at 000058, Addendum at 9.

¹⁰⁰ *Damon v. Ashcroft*, 360 F. 3d 1084, 1088 (9th Cir. 2004).

judge from making decisions based solely on the facts and the law, which our system requires. A disqualifying bias or prejudice is one that has an extrajudicial source and results in an opinion based upon something other than what the judge learned from the judge's participation in the case.

The Immigration Judge questioned Ms. Knazze's intent simply because she testified she married Mr. Ebrahim because she was intrigued by his foreign background. Even if one of the reasons Ms. Knazze married Mr. Ebrahim is because she was intrigued by his culture, this does not prove that the marriage was not bona fide.

In a Ninth Circuit Court of Appeals decision, the court ruled that motivations to marry are at most evidence of intent, and do not themselves make the marriages shams.¹⁰¹ The court reasoned that "just as marriages for money, hardly a novelty, or marriages among princes and princesses for reasons of state may be genuine and not sham marriages, so may marriages for green cards be genuine."¹⁰² The court held that "an intent to obtain

¹⁰¹ *United States v. Orellana-Blanco*, 294 F. 3d 1143, 1151 (9th Cir. 2002).

¹⁰² *Id.*

something or than or in addition to love and companionship from that life does not make a marriage a sham.”¹⁰³

Similarly, some of the testimony that the IJ questioned in her opinion regarding the reasons for the marriage does not lead to the conclusion that the marriage was not bona fide. In her opinion, the IJ stated that it was “interesting and relevant” that when Mr. Ebrahim’s attorney asked Ms. Knazze why they got married, she answered that she was intrigued by him and that he was from another country. First, this characterization of the testimony is simply not true. As the hearing transcript indicates, when asked whether she grew to like Mr. Ebrahim during the early stages of their friendship, Ms. Knazze testified that she did, saying “I was intrigued because he was from a different country and...I grew fond of that. I liked the way he carried himself.”¹⁰⁴ Her actual response to the attorney’s question when he asked her why they got married was “Because I...wanted to be settled and I...liked the idea of becoming a wife and having a family

¹⁰³ *Id.*

¹⁰⁴ CR at 000163, App. at 29.

and loving and supporting my husband.”¹⁰⁵ Furthermore, even if Ms. Knazze is attracted to and intrigued by Middle Eastern men, it is racially insensitive to use that fact as the basis to conclude that her marriage was not bona fide and that she did not intend to establish a life together with Mr. Ebrahim.

The IJ’s concerns about Ms. Knazze’s credibility were based on impermissible reasons. Disregarding Ms. Knazze’s testimony concerning the marriage, the IJ found erroneously that Mr. Ebrahim failed to establish he entered the marriage in good faith. The Court should reverse the lower courts’ finding consistent with due process of law.

CONCLUSION

In light of the evidence on the record, the lower courts’ application of the legal requirements for a hardship waiver is incorrect and is subject to de novo review. Moreover, the factual finding that Mr. Ebrahim did not establish he is eligible for a waiver is not supported by substantial evidence.

¹⁰⁵ CR at 000165, App. at 28.

Mr. Ebrahim demonstrated that he entered his marriage in good faith. Based upon the foregoing, Mr. Ebrahim respectfully requests the Court to vacate the IJ and Board's decisions and remand with instructions to approve the I-751 petition or, in the alternative, remand the matter for further proceedings.

Respectfully submitted,

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